

STATE OF VERMONT  
HUMAN RIGHTS COMMISSION

Naomi Stewart	)	
Charging Party,	)	
	)	
v.	)	HRC Charge No. HV08-0021
	)	HUD Charge No. 01-08-0259-8
	)	HUD 504 Charge No. 01-08-0111-4
Round Barn Housing Corp., Lake	)	
Champlain Housing Ventures, and	)	
H.V. 2005, Inc.	)	
Respondents.	)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

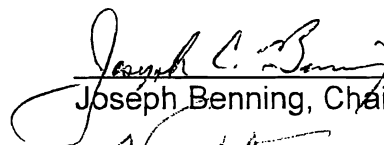
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Round Barn Housing Corp., Lake Champlain Housing Ventures, and H.V. 2005, Inc., the Respondents, illegally discriminated against Naomi Stewart, the Charging Party, in housing on the basis of disability in violation of 9 V.S.A. §4503(a)(10) of the Vermont Fair Housing and Public Accommodations Act.

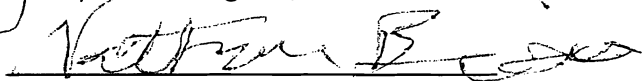
Joseph Benning, Chair	For <input type="checkbox"/>	Against <input checked="" type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Shirley Boyd-Hill	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mary Marzec-Gerrior	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input type="checkbox"/>	Against <input checked="" type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Entry: Reasonable grounds <input checked="" type="checkbox"/> Motion failed <input type="checkbox"/>				


2. Because the Human Rights Commissioners found that there are reasonable grounds to believe that Round Barn Housing Corp., Lake Champlain Housing Ventures, and H.V. 2005, Inc., the Respondents, illegally discriminated against Naomi Stewart, the Charging Party, in violation of the Vermont Fair Housing and Public Accommodations Act, a final attempt to resolve this part of Charge No. HV08-0021 through settlement shall be completed by June 28, 2009.

Dated at Montpelier, Vermont this 28<sup>th</sup> day of August, 2008.

BY: HUMAN RIGHTS COMMISSION

  
Joseph Benning, Chair

  
Nathan Besio

  
Shirley Boyd-Hill

  
Mary Marzec-Gerrior

  
Donald Vickers

**INVESTIGATIVE REPORT**  
**HRC Case No.: HV08-0021**  
**HUD Case No.: 01-08-0259-8**

**CHARGING PARTY:** Naomi Stewart

**RESPONDING PARTY:** Round Barn Housing Corporation c/o Lake Champlain Housing Trust; Lake Champlain Housing Ventures; H.V. 2005, Inc.

**CHARGE:** housing/ disability

**Summary of Charge:** On May 5, 2008, Naomi Stewart filed a charge of housing discrimination alleging that Round Barn Housing, c/o Lake Champlain Housing Trust, Lake Champlain Housing Ventures, and H.V. 2005 discriminated against her because of her disability. Specifically, she alleges that other tenants harassed her and that the respondents did not respond to or follow-up on her complaints regarding this harassment. Additionally, she alleges that she requested a reasonable accommodation from the respondents and did not receive a response to her request.

**Summary of Response:** On May 20, 2008, Round Barn Housing Corporation c/o Champlain Housing Trust, Lake Champlain Housing Ventures, and H.V. 2005, Inc. (hereinafter the Respondents), by its attorney stated that it did not discriminate against Ms. Stewart. Specifically, the respondents allege that its staff responded to and followed up on all of Ms. Stewart's complaints even though she was extremely difficult to work with. The respondents admit that on April 27, 2007 they sent a Notice to Vacate to Ms. Stewart because of her behavior towards other tenants.

**Preliminary Recommendations:** This investigation makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that Round Barn Housing Corporation c/o Lake Champlain Housing Trust, H.V. 2005 Inc. and Lake Champlain Housing Ventures discriminated against Naomi Stewart in violation of 9 V.S.A. §4503(a)(10) of the Vermont Fair Housing and Public Accommodations Act by its failure to respond in a timely fashion to Ms. Stewart's Reasonable Accommodation request.

## **INTERVIEWS**

**6/17/08, 7/17/08 – Stephen Shepard**, property manager for Round Barn Housing Corporation during Ms. Stewart's tenancy

**6/17/08, 7/22/08 – Stacy Silloway**, assistant property manager for Round Barn Housing Corporation during Ms. Stewart's tenancy

**6/14/08 – Ms. Stewart's** written response to HRC investigative questions

**6/25/08 – Susan Ainsworth-Daniels**, associate director of resident services for Champlain Housing Trust

**7/21/08 – Roland Murray**, friend of Ms. Stewart's and Round Barn tenant during Ms. Stewart's tenancy at Round Barn

## **DOCUMENTS**

- **Winter 2007** - Copies of phone messages taken by respondents re: Ms. Stewart
- **2/1/07 - 6/1/07** – Vacancy report for Round Barn
- **4/6/07** – Incident report from Champlain Islanders Developing Essential Resources (hereinafter CIDER) re: Ms. Stewart
- **4/14/07** – Letter to Pat Willis Lake Champlain Housing from twelve Round Barn Residents re: Ms. Stewart's behavior
- **4/27/07** – Notice to Vacate Issued to Ms. Stewart
- **5/05/08** – Charge of discrimination
- **5/20/08** – Response to charge of discrimination with attachments – including copies of three letters sent by Ms. Stewart to the Respondents (letters dated 3/4/07, 3/27/07 & 4/6/07)
- **7/25/08** – Ms. Silloway's Affidavit re: a conversation with Ms. Stewart

## **ELEMENTS OF PROOF**

### **V.S.A. 9 §4503(10)**

- 1. Ms. Stewart is an individual with a disability:**
- 2. Respondents knew of the Ms. Stewart's disability or should have reasonably been expected to know;**
- 3. Ms. Stewart's requested accommodation of her disability may have been necessary to afford her an equal opportunity to use and enjoy the property; and,**

**4. The Respondents refused to make such an accommodation.**

**I. FACTS**

**a. Undisputed facts**

Ms. Stewart stated that she is a Jewish woman with a disability. The respondents do not dispute this fact. Ms. Stewart receives Social Security Insurance (SSI) and Social Security Disability Insurance (SSDI). Mr. Shepard and Ms. Silloway were aware that Ms. Stewart received income from Social Security for her disabilities. Ms. Stewart resided at the Round Barn Apartments (Round Barn) for approximately three months from February 1, 2007 until May 3, 2007. She moved to Round Barn directly from Chicago, Illinois. Ms. Stewart did not visit Round Barn prior to moving there. Round Barn is a 25 unit, rural apartment complex in Grand Isle, Vermont. Round Barn is a housing facility that caters to persons with disabilities and elderly persons.

Ms. Stewart and other residents of Round Barn made numerous complaints about each other to the Round Barn management during Ms. Stewart's tenancy.

On April 27, 2007, Round Barn Property Manager, Stephen Shepard, issued a thirty-day Notice to Vacate was issued to Ms. Stewart. The Notice to Vacate stated the following:

Naomi Stewart has engaged in threatening behavior and has verbally assaulted residents within the property on repeated occasions. Based on reports I [Mr. Shepard] have received of noise disturbances, and altercations with other residents said disturbances constitute a violation of your lease as these acts disturb the rights and comforts of your neighbors and disrupt the livability of the site.

Ms. Stewart moved out of Round Barn May 3, 2007.

**b. Statements of Naomi Stewart**

Ms. Stewart stated that she told the Round Barn staff that she receives SSI and SSDI. She believes that she provided proof of this income as part of the application process. Ms. Stewart stated that she believed that Round Barn was a complex for persons with disabilities. Ms. Stewart also said that before she moved in she had a panic attack while talking on the phone with Ms. Silloway.

After moving into Round Barn, Ms. Stewart stated that she called Mr. Shepard, the property manager at Round Barn, approximately three times before he returned her call. Ms. Stewart recalled that she complained about her neighbor, Rose Barrows. She stated that Mr. Shepard promised to meet with her to discuss the situation but never did. Ms. Stewart stated that all the tenants complained about Mr. Shepard's habit of not returning calls.

Ms. Stewart alleged that several of her co-tenants called her names such as "kike", "whore" and "bitch." She also alleged that one tenant said, "I'll do whatever it takes to get you out of here." Ms. Stewart said her neighbor, Rose, complained about noise when Ms. Stewart exercised, even though Ms. Stewart tried to exercise at times when Rose was not in her apartment.

Ms. Stewart stated that her personality and behavior had "everything to do with how these tenants treated me. Every word I said was offensive to them." Ms. Stewart stated that there was one person who rode the CIDER van who was an "obese, loud woman who judged and disliked" Ms. Stewart.

This investigation asked Ms. Stewart if she had ever threatened anyone at Round Barn with a gun. Ms. Stewart stated that she never made any threats regarding a gun. She admits she asked about shooting a gun in the local woods for target practice. Ms. Stewart stated that at one time, she owned a gun and that target shooting was a hobby she wanted to share with other tenants.

Ms. Stewart stated that she “never made any kind of threat with a gun or about guns.” Ms. Stewart was emphatic that she takes gun ownership and gun use very seriously and would never do anything or say anything that would compromise her commitment to acting responsibly regarding guns.

Ms. Stewart stated that she has never met Ms. Silloway, the assistant manager at Round Barn, in person. However, she spoke to her many times over the phone. Ms. Stewart stated that she asked Ms. Silloway to move her to another apartment building because of the problems she was having with the other residents in the building she lived in.

Ms. Stewart alleged in her charge that Lake Champlain Housing Ventures did not respond to her “reasonable accommodation” request to move to another apartment when her neighbor complained about the noise Ms. Stewart made when she exercised. This investigation asked Ms, Stewart if anyone connected with Round Barn management ever responded to her request to move into the empty apartment in Building 1. Ms. Stewart said that no one from Round Barn ever responded to her request to move to another apartment at Round Barn.

This investigation asked Ms. Stewart if she ever had problems while riding on the CIDER<sup>1</sup> van. Ms. Stewart admitted that she cussed while on the van and now feels sorry about this behavior. She also said that one time when she felt the driver was driving in an unsafe manner "I freaked out." She said the driver told her to "shut the hell up." She stated that she complained because this driver was very scary; she thought he might be on drugs. Ms. Stewart stated that she needed to stop frequently to use a rest room so she requested that she be given rides alone. Ms. Stewart stated that CIDER never required her to ride alone.

This investigation asked Ms. Stewart if she thought her behavior or reactions to situations with her neighbors, CIDER and/or the respondents might have contributed to the problems she experienced at Round Barn.<sup>2</sup> Ms. Stewart told this investigation that she does sometimes have a hard time interacting with people. Because of this she suggested that this investigation send her questions so she could respond in writing rather than in an interview setting. She also said that she hated to be corrected and that she has no tolerance or patience for "racists or intolerant people." Ms. Stewart admitted that she "panics" at times and has "a bad temper."

Ms. Stewart stated that she suffers from Post-Traumatic Stress Disorder, hypoglycemia, and memory problems. She stated that she is sure the other tenants at Round Barn did not like her and that she feared for her safety while living there.

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<sup>1</sup> CIDER provides transportation to elderly and disabled persons who reside in the Grand Isle area of Vermont.

<sup>2</sup> During the course of this investigation, the HRC staff experienced several extreme reactions from Ms. Stewart when she misunderstood various events. Ms. Stewart yelled at the HRC staff directly and left very long, angry voice messages that included accusations and foul language. This investigation believes these are manifestations of Ms. Stewart's disabilities. Ms. Stewart did apologize for these incidents after the fact.



### **c. Statements of Steven Shepard**

Mr. Shepard stated that he was the property manager at Round Barn for about one year and for most of Ms. Stewart's tenancy. He no longer works for the Respondents.

Mr. Shepard recalled that Ms. Stewart complained about the resident manager who lived next door to her, Art Cottrell<sup>3</sup>. Mr. Shepard stated that Mr. Cottrell was "kind of abrupt and kind of rude." He noted that Mr. Cottrell was a former prison guard and he had "an every-thing-by-the-book" attitude. In addition, because Mr. Cottrell was quite large and had a deep voice Mr. Shepard thought Mr. Cottrell could be intimidating.

Mr. Shepard stated that people initially befriended Ms. Stewart and provided her with many rides, but that residents got tired of being responsible for providing her transportation. He said he never witnessed any violent behavior or threats of violence from Ms. Stewart. He said that he recalled one abusive voicemail from Ms. Stewart that went to Ms. Silloway, the assistant manager at Round Barn.

Mr. Shepard believed that residents began complaining about Ms. Stewart's behaviors before Ms. Stewart complained about their behavior toward her. Mr. Shepard believed that Round Barn's "well greased rumor machine" probably added to the tensions between Ms. Stewart and some of the other residents. Mr. Shepard stated that he had kept a record of calls he received while he was property manager

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<sup>3</sup> Though this investigation originally sought to interview the Corttells, they refused to allow the respondents to release their contact information to HRC. This investigation does not believe that any information the Corttell's might have provided would have changed the recommended determinations of this investigation.

at Round Barn. However, because the office was relocated and he left the organization, he was unsure if those records were still available.<sup>4</sup>

Mr. Shepard recalled at one point that someone from Lake Champlain Housing Ventures met with the tenants about a number of problems including problems between Ms. Stewart and other residents. Mr. Shepard said he was not present at this meeting because he was the object of some of the tenants' complaints. He said that he "got his butt chewed out by the main office because of all the problems at Round Barn."

Mr. Shepard said that near the end of his time as the Round Barn property manager he was reluctant to meet alone with Ms. Stewart because she had issues dealing with men, including an allegation of being sexually harassed by one of the other male residents.

Mr. Shepard stated that he attempted to work with CIDER regarding CIDER's problems with Ms. Stewart. This included some of Ms. Stewart's extreme behaviors while riding in CIDER's van and the fact that her needs for transportation were "stressing CIDER's resources." He said he also tried to work with a northwest Vermont counseling agency to provide Ms. Stewart resources that could help her deal with issues including the difficulty of living in such an isolated place. However, because of confidentiality issues and Ms. Stewart refusal to provide the counseling agency with background information, these efforts appeared to be unsuccessful.

This investigation asked Mr. Shepard if he recalled whether there was an opening in the Building 1 at Round Barn during Ms. Stewart's tenancy. (Ms. Stewart resided in Building 2.) He stated that he was not sure, there may have been. He stated that Round Barn's transfer

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<sup>4</sup> The respondents produced four phone message slips for the time period that Ms. Stewart was a tenant at Round Barn but were unable to find Mr. Shepard's records.

policy did not allow residents to change apartments until they had been in their apartment for at least one year and then only if there had not been any substantial problems with the resident.

This investigation asked Mr. Shepard if he had viewed Ms. Stewart's letters to move to a different apartment as requests for a reasonable accommodation. He said it was not a reasonable accommodation request because she did not use the reasonable accommodation form and there was no verification of a need for the accommodation. Mr. Shepard said that he did not recall engaging in a discussion with Ms. Stewart regarding her request to move into another apartment at Round Barn.

This investigation asked Mr. Shepard why Ms. Stewart was given an eviction notice. He replied because it was "a three-against-one situation" (three residents' word against Ms. Stewart's). He also stated that the management had never before experienced the residents acting in the manner they did during Ms. Stewart's tenancy at Round Barn. However, he also mentioned that the residents were "very riled up" because prior to Ms. Stewart's arrival the tenant who had lived in her apartment had engaged in some criminal behavior. He thought because of this the other residents were probably predisposed to being less tolerant of Ms. Stewart's behaviors.

He said that usually when a Notice to Terminate is issued the resident exercises the 10-day clause that allows them the opportunity to work out the situation or problem. Ms. Stewart did not do this. She moved out six days after receiving the notice. This investigation asked Mr. Shepard if he explained the 10-day clause to Ms. Stewart. He replied that he had not. He said that the Notice included a clause stating that she was to talk with Susan Ainsworth-Daniels if she had questions and that she was not to contact him.

Mr. Shepard added at the end of the interview that he believes if Ms. Stewart could have driven herself around most of the tensions would not have happened. He stated that the respondents had assumed she owned a car. He said he does not believe Ms. Stewart fully understood how rural the property was before she moved to Round Barn.

#### **d. Statements of Stacey Silloway**

Ms. Silloway has worked for Champlain Housing Trust/Lake Champlain Housing for approximately three years. She was the assistant property manager of Round Barn during Ms. Stewart's tenancy. She stated that her main role as assistant manager was to screen and process applications and move tenants into properties.

Ms. Silloway stated that Ms. Stewart applied on line to live at Round Barn. Ms. Silloway stated that Ms. Stewart had a project based Section 8 voucher that allowed her to live in Section 8 projects around the United States. Ms. Silloway suggested to Ms. Stewart that it would be a good idea for her to visit Round Barn prior to moving there because it was such a different environment than Chicago where Ms. Stewart was living when she applied to Round Barn. Ms. Stewart declined to do this. Ms. Silloway stated she was aware that Ms. Stewart was on SSI/SSDI at the time she moved into Round Barn.

This investigation asked Ms. Silloway about the age of the residents at Round Barn. She stated that a majority of the residents were 62 years or older, though there were maybe three or four younger residents, under 30 years. Ms. Silloway said that they have been very successful with integrating younger residents with older residents at Round Barn. This investigation asked her if she believed that the age difference between Ms. Stewart and most of the other

residents played a role in the issues that arose. She stated she did not. Ms. Silloway stated, "Naomi was extremely anxious when she [Naomi] arrived at Round Barn and that the support she needed was not in place."

This investigation asked Ms. Silloway if she ever heard Ms. Stewart threatening another resident or witnessed any violence involving Ms. Stewart. Ms. Silloway said that she had never met Ms. Stewart in person, though she spoke with her many times on the phone, sometimes for an hour. Ms. Silloway that said she heard second hand that Ms. Stewart was threatening her. Ms. Silloway stated that it was reported to her that Ms. Stewart said she was going to "find Ms. Silloway's house" and "was going to get her."

This investigation asked Ms. Silloway what caused her to believe the allegations from other tenants over Ms. Stewart's allegations. She said that she received phone calls from other tenants and Ms. Stewart, but that the consistency of the complaints that she heard from other tenants was what convinced her that what the other tenants were saying regarding Ms. Stewart was probably true. She stated that Ms. Stewart moved in stressed out and that the complaints from other tenants and from Ms. Stewart started relatively soon after she had moved in.

Ms. Silloway stated that she did not know the details of Ms. Stewart's sexual harassment complaint. She did recall hearing about an incident when a male tenant greeted Ms. Stewart and because Ms. Stewart felt the male tenant was sexually harassing her, she chased him down the hall. She recalls that there were several phone calls about this incident. Ms. Silloway recalls that she passed this complaint on to Mr. Shepard.

This investigation asked Ms. Silloway about an allegation regarding Ms. Stewart's neighbor complaining about noise Ms. Stewart made while exercising in her apartment. Ms. Silloway stated that Ms. Stewart was upset because her neighbor was complaining to Ms. Stewart about the noise. The neighbor did not complain to management about Ms. Stewart's noise. Ms. Silloway said she told Ms. Stewart that she had a right to do her exercises and other daily activities. Ms. Silloway provided this investigation with an affidavit stating that she addressed this issue with Ms. Stewart in late February or early March. Ms. Silloway stated in her affidavit that she told Ms. Stewart if she continued to have problems with this neighbor she should contact the property manager and he would address her complaint.

This investigation asked Ms. Silloway if Ms. Stewart was offered one of the empty apartments in Building 1 at Round Barn. Ms. Silloway stated that she was not privy to that specific conversation but stated that the policy was that the tenant needed to make a written request and a transfer had to be approved by the compliance office. She stated that transfers were given only after the one-year lease had expired, except for a medical need. She stated that "we" did not feel moving Ms. Stewart to another building would have been helpful, in part because the man that she allegedly chased down the hall lived in that other building. Ms. Silloway mentioned that an alternative site was "thought to be better."

This investigation asked if there was any documentation of the respondents engaging in a conversation with Ms. Stewart regarding her requests to move into another building at Round Barn. Ms. Silloway stated that Mr. Shepard kept very good records but she was not sure what was in those records and since moving the office and

Mr. Shepard leaving the respondents have not been able to find his records.

Ms. Silloway said she was not aware of a written policy regarding how to handle neighbor-to-neighbor complaints. However, she said the practice is to hear both sides of a situation and to try to find a solution. Ms. Silloway also said that there have been times when the property managers could not resolve an issue and they have asked Susan Ainsworth-Daniels, who works with persons with disabilities, to help resolve conflicts.

#### **e. Statements of Susan Ainsworth-Daniels**

Ms. Daniels has worked for Champlain Housing Trust (CHT) for about 20 years. In her role as Associate Director of Resident Services, property managers sometimes contact her if there are problems with residents. Ms. Daniels is also a board member for Round Barn.

Sometimes Ms. Daniels meets with a resident who is experiencing problems. She stated that she never met with Ms. Stewart in this capacity but did speak briefly with her for about five minutes after a board meeting. Ms. Daniels recalled that this was in April shortly before Ms. Stewart left. Ms. Stewart told her that she was not happy and Ms. Daniels told her she was working on trying to help her out.

This investigation asked Ms. Daniels what “trying to help her out” meant. She stated that the human services network is very much a “patchwork” in that part of the state. Ms. Daniels said she contacted Paul Dettman, Director of Burlington Housing Authority, regarding moving Ms. Stewart to Burlington under a “local preference” classification. Ms. Daniels felt that services to address Ms. Stewart’s needs were more readily available in Burlington. Mr. Dettman told Ms.

Daniels that he could not give Ms. Stewart “local preference” status because that status required a person to be homeless.

Ms. Daniels stated that Mr. Shepard had contacted her regarding Ms. Stewart’s needs. Ms. Daniels stated that Mr. Shepard was frustrated and did not know what to do regarding Ms. Stewart. Ms. Stewart’s transportation needs were identified as being very problematic. Ms. Daniels recalled that Mr. Shepard contacted her shortly after Ms. Stewart moved to Round Barn.

Ms. Daniels stated that Mr. Shepard had sent her copies of the letters from Ms. Stewart and the other Round Barn tenants. Ms. Daniels stated that during the three years Champlain Housing Trust had managed Round Barn, she had not experienced “these types of problems” at Round Barn prior to Ms. Stewart moving there.

Ms. Daniels also expressed some concern about Art Cottrell, the resident manager at Round Barn during Ms. Stewart’s tenancy there, as being a little too over involved with issues at Round Barn. She stated that Ms. Stewart had reported not feeling safe around him.

#### **f. Statements of Roland Murray**

Roland Murray, stated that he believed that there was an empty apartment in his building, Building 1, during the time period that Ms. Stewart wanted to move to another apartment. He stated that he thought people in the building that Ms. Stewart resided in “treated her like dirt.” Mr. Murray recalled that a day or two after Naomi arrived at Round Barn, Rose, one of the neighbors Ms. Stewart was having problems with, announced to a gathering of seniors that she “did not like that new woman.” This incident was the only one he actually observed. However, he stated that Ms. Stewart came to his apartment in tears many times stating that her neighbors were mistreating her.



He also said that after Ms. Stewart moved in the people in her building bought a big poster and posted it in the stairwell where she would have to walk past to get to her apartment. The poster said, "Welcome to a loony bin."

**g. Other evidence of the facts**

The respondents provided this investigation with various documents regarding the problems Ms. Stewart and other Round Barn tenants were experiencing with each other.

- Three letters from Ms. Stewart to Round Barn property management dated 3/4/07, 3/27/07, and 4/6/07. These letters do not mention the slurs or comments asserted in Ms. Stewart's April 29, 2008 HRC discrimination charge. The 3/04/07 letter is a request to be transferred to an apartment that is not as rural as the Round Barn. In that letter Ms. Stewart expresses concern about the lack of available transportation she is experiencing at Round Barn.
- The 3/27/08 letter states that she has been "yelled at by other tenants" and corrected by other tenants regarding rules. Ms. Stewart's main complaint in this letter seemed to be the bossiness of other tenants. She mentions that she felt "threatened by at least 4 tenants." Ms. Stewart also states in the 3/27/07 letter that her neighbor Rose Barrows complains about the noise Ms. Stewart makes when she exercises. Ms. Stewart makes it clear in her letter that her living situation is not working out and she requests to be moved into an apartment that had recently opened up in the other building at Round Barn. She also makes it clear that her mental health is suffering because of the tensions between her and four of her neighbors.

- In the 4/6/07 letter, sent to Janet Dion, a prior management Director at Lake Champlain Housing, Ms. Stewart again asks to be moved to another apartment in the other building at Round Barn because she is “being harassed, followed and swore at by 4 of the tenants.” In this letter she states that a “500 pound angry woman (said) bad offensive comments about the Jewish religion.”
- This investigation also reviewed a 4/11/07 letter signed by Art Cottrell, the Round Barn resident manager<sup>5</sup>, outlining Ms. Stewart’s behaviors. In that letter Mr. Cottrell states that Ms. Stewart shouted various vulgarities including “F - - - you.” He stated in the letter that she also slapped her hands on their front door and he alleged that Ms. Stewart said, “she had no problem doing physical harm to people.”
- This investigation reviewed a 4/14/07 letter to Pat Willis, a management level employee at Lake Champlain Housing. The letter was copied to HUD, Congressman Sanders and Jennifer Cameron at the Vermont State Housing Authority. Twelve residents of Round Barn Apartments signed this letter. The letter addressed several complaints but was mostly concerning Ms. Stewart’s behavior.
- The letter alleged a number of incidents including but not limited to Ms. Stewart:
  - making remarks to a resident that caused the resident to call the sheriff because she was afraid;
  - talking about shooting a gun in the backyard;
  - delivering a threatening note to another resident;
  - acting out in the local library and bank;
  - constantly asking for rides;

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<sup>5</sup> The “resident manager” is not a typical property manager but is the “on grounds” person who has keys to all the apartments in case of an emergency. Mr. Cottrell was removed from this position as part of the resolution to the problems being experienced at Round Barn.

- telling a resident that she could not be in the common area; and,
  - accusing a resident who offered her furniture of coming to rape her and then chasing him down the hall.
- The respondents provided this investigation with copies of four phone message slips for Ms. Silloway regarding Ms. Stewart. Three of the messages (dated 2/5, 2/21 and 4/6 – assumed 2007) were from residents wanting to talk with Ms. Silloway regarding Ms. Stewart and one was from Ms. Stewart dated 2/21 (assuming 2007) stating that she wanted to get counseling.
  - A 4/6/07 Incident Report filed by Dave Pellsbury, a van driver for CIDER, regarding Ms. Stewart's behavior states that during a ride Ms. Stewart became agitated and angry. The report also states that Ms. Stewart's behavior bordered on "being verbally abusive and included "profanity, aggressive remarks and extreme negativity."
  - Ms. Stewart alleged that she had left many items in her apartment including an expensive large screen TV. This investigation asked the Respondent's attorney to check records to verify Ms. Stewart's allegation. Bill Grossclose, a maintenance employee at Round Barn, told this investigation through the respondent's attorney, that no belongings were left behind in Ms. Stewart's apartment. He stated that if there had been items left behind he would have filled out a "move out" report and she would have had 60 days to claim her items. Mr. Shepard also stated that he did not recall any property being left in Ms. Stewart's apartment.
  - The respondents provided this investigation a Vacancy Report for Round Barn for the period from 2/1/07 to 6/1/07. That report indicates that there were apartment openings in Building 1 (the

building Ms. Stewart wanted to move to) from 3/1/07 – 3/15/07, 4/13/07 – 6/1/07, and 2/1/07 – 2/28/07.

## **II. ANALYSIS**

Vermont's Fair Housing and Public Accommodations Act (FHPAA), 9 V.S.A. §4503(a) states:

It shall be unlawful for any person:

(10) To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

(2) To discriminate against, or to harass any person in the terms, conditions or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

### **a. Elements of Proof – 9 V.S.A §4503(10)**

- 1. Ms. Stewart is an individual with a disability;**
- 2. Responding party knew of Ms. Stewart's disability or should have reasonably been expected to know;**
- 3. Ms. Stewart's requested accommodation of her disability may have been necessary to afford her an equal opportunity to use and enjoy the property; and,**
- 4. The respondent refused to make such an accommodation.**

Adapted from Giebeler v. M&B Associates, et al., 343 F3d 1143, 1147 (9<sup>th</sup> Cir. 2003).

To prevail in this case Ms. Stewart must prove each of the above-mentioned elements by a preponderance of the evidence. (See In re Smith, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications."))

## **b. Discussion of elements**

### **Whether Ms. Stewart is an individual with a disability**

Ms. Stewart stated to this investigation that she is a person with several disabilities, including at least one emotional disability. The respondents in their reply accepted her assertion that she is a person with a disability.

Additionally, persons who meet the definition of disability for purposes of receiving SSI or SSDI in most cases meet the definition of a disability under the Fair Housing Act. Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Modifications Under the fair Housing Act, pg. 3, footnote 8, March 5, 2008; See, e.g., Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999). Ms. Stewart stated that she is a person who receives SSI and SSDI. She shared this information with Round Barn staff during the application process and both Ms. Silloway and Mr. Shepard acknowledged that they knew that she received SSI/SSDI.

Additionally, this investigation's interviews with management at Round Barn support Ms. Stewart's claim that she is a person with an emotional disability. Mr. Shepard acknowledged great difficulties in dealing with Ms. Stewart and he even attempted to get her into

counseling. Ms. Daniels was contacted by Round Barn's management to assist them in working with Ms. Stewart – a step the respondents take sometimes when having difficulty dealing with persons with emotional disabilities. The reports of Ms. Stewart's behaviors from other residents also support her claim of being a person with a disability. Additionally, this investigation's own experience with Ms. Stewart adds credence to Ms. Stewart's claim that she is a person with a disability.

**Whether the responding party knew of Ms. Stewart's disability or should have reasonably been expected to know**

As stated above a person who receives SSI and/or SSDI is a person with a disability under the Federal Fair Housing Act. First, the respondents acknowledged in their reply that Ms. Stewart was a person with a disability. Second, as part of the application process Ms. Stewart provided information to Round Barn that indicated she received SSI and SSDI. Mr. Shepard and Ms. Silloway both stated that they were aware that Ms. Stewart received SSI/SSDI. The management at Round Barn knew or reasonably should have known of Ms. Stewart's disability.

Finally, the numerous incidents that Mr. Shepard and Ms. Silloway experienced regarding Ms. Stewart's behaviors during her tenancy at Round Barn should have reasonably informed Round Barn staff that Ms. Stewart was/is a person with a disability.

**Whether an accommodation of Ms. Stewart's disability might have been necessary to afford her an equal opportunity to use and enjoy the property**

Ms. Stewart was at Round Barn less than three months when she received a Notice to Vacate. Starting as early as March 4, 2007, approximately one month after she moved to Round Barn, Ms. Stewart requested that she be moved because she was having problems with some of her neighbors and having trouble with transportation. Ms. Silloway acknowledged that Art Cottrell probably over stepped his role as resident manager. Mr. Shepard told this investigation that Mr. Cottrell, who lived in the same building as Ms. Stewart, had an "intimidating" and "ridged, by-the-book, personality." Ms. Stewart stated that she was having serious problems relating to him, his wife, and their friends. Mr. Shepard also stated that Round Barn had a "well greased rumor mill" that added to the problems Ms. Stewart was experiencing.

After Ms. Stewart's first letter, she wrote two more letters to various staff involved in the management of Round Barn. In both letters, dated 3/27/07 and 4/6/07, Ms. Stewart requested a transfer to another apartment in Building 1 at Round Barn because of the problems she was experiencing with her immediate neighbors, including Art Cottrell. Ms. Stewart clearly stated the negative effect her present living situation was having on her mental health. Ms. Stewart stated how "unhappy, stressed, and afraid" she was living in her apartment. In both these letters, Ms. Stewart specifically requested to move to a vacant apartment in Building 1 at Round Barn where she requested to move.

Additionally, Ms. Silloway stated that she had numerous long phone calls from Ms. Stewart regarding the problems she was

encountering. Finally, both Mr. Shepard and Ms. Silloway were aware of the other tenants' dissatisfaction with being a neighbor to Ms. Stewart because of some strange and exaggerated behaviors allegedly exhibited by Ms. Stewart.

This investigation believes the facts of this case indicated that an accommodation was necessary to afford Ms. Stewart an equal opportunity to use and enjoy her apartment and that Ms. Stewart requested a reasonable accommodation when she sent three letters to the Round Barn management requesting a transfer to another apartment.

**Whether Round Barn staff and the other respondents refused to make such an accommodation.**

"The determination whether a requested accommodation is reasonable is fact specific and will be resolved on a case-by-case basis." Andover Hous. Authy.v Shkolnik, 443 Mass. 305, 307 (2005). The courts have interpreted the Federal Fair Housing Act (FFHA) to require landlords to make accommodations to tenant's with mental disabilities if the tenant's behavior is related to her disability. See Roe v. Sugar River Mills Associates, 820 F.Supp. 636, 637, 640 (D.N.H. 1993); Roe v. Housing Authority, 909 F.Supp. 814, 822 (D.Colo. 1995). *But See* Boston Housing Authority v. Bridgewaters, Appeals Ct. of Mass., No. 06-P-145, pg. 1115, Aug. 20, 2007 (The court concluded that a tenant who had physically assaulted and caused significant physical injuries to another tenant was not a "qualified handicapped person" entitled to an authority's general obligation to provide reasonable accommodations for its handicapped tenants.)

Additionally, before a tenant with a disability may lawfully be evicted the landlord must demonstrate that no reasonable



accommodation will eliminate or acceptably minimize any risk the tenant poses to other residents. Foster v. Tinnera, 705 So.2d. 786 (La.App., Dec 1997); Cornwell and Taylor v. Moore, 2000 WL 1887528 (Minn.App. Dec. 22, 2000).

The above-mentioned cases refer to situations where the property owner/management has asserted that the eviction action they took was justified because the tenant was a danger to other tenants. However, the respondents neither specifically stated that Ms. Stewart was a "danger" to other tenants, nor did they have objective evidence of the charging party being a "direct threat" to the safety of others. Ms. Stewart's eviction notice stated that she was "engaging in threatening behavior and verbally assaulted residents" and that she was disrupting the other tenants' enjoyment of their property.

A housing provider cannot require that a reasonable accommodation request be made in a "particular manner." The Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Accommodations Under the Fair Housing Act, May 17, 2004, states that "an individual making a reasonable accommodation request does not need to mention the Act or use the words 'reasonable accommodation'." The person must make the request in a manner that "a reasonable person would understand it to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability."

This investigation believes that Ms. Stewart's letters of 3/27/07 and 4/06/07 where she specifically requested to move into a vacant apartment because of the difficulties she was experiencing with her neighbors was a proper request for a reasonable accommodation. Her request did not have to be in a specific form or even use specific "reasonable accommodation" language. This investigation believes

that her request coupled with the respondents' knowledge of Ms. Stewart's disability created a situation that "a reasonable person would understand it to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability," in other words a request for a reasonable accommodation.

The Respondents contend that they did address Ms. Stewart's reasonable accommodation request. The facts show that at some point, the respondents did ask the Burlington Housing Authority if Ms. Stewart could receive a "local preference" in order to move to Burlington. According to Ms. Silloway, Paul Dettmen, the executive director of the Burlington Housing Authority, said Ms. Stewart did not qualify for "local preference" status because she was not homeless. Additionally, Ms. Silloway stated and this investigation believes that she had a conversation with Ms. Stewart regarding her neighbor's complaints about Ms. Stewart exercising in her apartment. The respondents also attempted to set Ms. Stewart up in counseling. However, these actions were not responses to Ms. Stewart's specific reasonable accommodation request to move into another apartment at Round Barn.

The respondent's reply to the discrimination charge and interviews with Ms. Silloway and Mr. Shepard indicated that the respondents may have discussed Ms. Stewart's request to move into another Round Barn apartment among themselves but there is no indication that Ms. Stewart was a part of these discussions. The respondents could not provide any records/documentation that the Round Barn management actually responded to Ms. Stewart's request to move into a vacant apartment in Building 1 at Round Barn nor did the respondents engage in an interactive process with Ms. Stewart. Ms. Stewart told this investigation that no one ever gave her an

answer to her request to move into the apartment that she thought was empty.

This investigation's interviews with both Mr. Shepard and Ms. Silloway indicate that they viewed Ms. Stewart's request to transfer to Building 1 as a "transfer request" which is different from a reasonable accommodation request. This investigation believes this was an error on the part of the Respondents.

This investigation was struck by how quickly, less than three months, after Ms. Stewart moved into Round Barn and only one month after her first request to move to another apartment, the respondents issued her a Notice to Vacate. There is little evidence that any other options to her reasonable accommodation request were explored or discussed with Ms. Stewart before Ms. Stewart was given a Notice to Vacate.

The respondents admitted that they did not expect Ms. Stewart to move after receiving the Notice to Vacate without first exercising the 10-day resolution option stated in the notice. This presumption on the part of the respondents implies that they believed there may have been other steps that could have been taken rather than actually evicting Ms. Stewart. Because Ms. Stewart had requested a reasonable accommodation, it was the respondents' responsibility to reply to her request and to engage in an interactive process to explore other possible accommodations. They did not do this. It is not reasonable to conclude that an eviction notice with a 10-day option to discuss the notice with Round Barn staff, would be construed by a person with emotional disability, as an invitation to discuss a reasonable accommodation request.

## CONCLUSION

This investigation believes that the facts of this case support all the elements of a prima facie case of housing discrimination based the Respondent's failure to provide a Reasonable Accommodation for her disability and do not support the elements of a prima facie case of hostile living environment.

**PRELIMINARY RECOMMENDATION:** This investigative report recommends that the Human Rights Commission find that there are **Reasonable Grounds** to believe that Round Barn Housing Corporation c/o Lake Champlain Housing Trust; Lake Champlain Housing Ventures; and H.V. 2005, Inc. discriminated against Naomi Stewart in violation of 9 V.S.A. §4503(a)(10) of Vermont's Fair Housing and Public Accommodations Act.

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**Ellen T Maxon, Investigator**

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**Date**

**Approved by:**

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**Robert Appel, Executive Director**

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**Date**

